IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1134 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHANDU POPAT HARIJAN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1134 of 1994

MR CJ VIN for Petitioner No. 1-2

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 26/07/2001

ORAL JUDGEMENT

The appellant accused are husband and wife. They were charged-sheeted for the offence under Section 307, 302, 504, 114 IPC for the death of original complainant Hiriben, who was the real sister of the appellant-accused

No.1. However, they faced the trial for the offence under Section 302, 504, 114 IPC before the Court of Additional Sessions Judge, Gondal, Dist. Rajkot in Sessions Case No. 51/94. After considering the evidence led by the prosecution and the defence of the accused, the learned Judge found both the appellants accused guilty for the offence under Section 304-Part I, read with 114 IPC and sentenced them to suffer 7 years RI and to pay fine of Rs. 2,000/-, in default to further undrgo one year RI. They were also given set-off for the period during which they remained as under-trial prisoner. However, both of them were acquitted for the offence under Section 504 IPC.

Aggrieved by the aforesaid order of conviction and sentence passed by the trial Court, both the appellants accused have filed this appeal before the Court. The same was admitted on 20.12.1994 by the learned Single Judge of this Court and ordered to be expedited. While admitting the appeal, appellant-accused No.2 Manjuben, who is wife of Chandu Popat - accused No.1 was ordered to be released on bail on same bail fresh bonds, but bail of the main accused - appellant No.1 was refused.

When this appeal was placed before this Court on 19.7.2001, learned APP Shri Mankad was directed to produce the jail records of the appellant accused and make a statement as to whether the accused have already undergone the sentence or not.

Today, Mr. Mankad has produced before the Court the jail record of the accused appellant No.1 - Chandubhai Popat. As per the jail record, the accused had deposited the fine of Rs. 2,000 and he had already undergone the sentence and therefore, he was already released from the jail. However, he has no record of the appellant accused No.2 because she was enlarged on bail by this Court while admitting the appeal.

In view of the fact that the appellant accused No.1 has already undergone the sentence imposed by the learned trial Judge, Mr.C.J.Vin for the appellant accused is not in a position to press this appeal qua the accused appellant No.1 Chandubhai Popat. Even otherwise on merits also he had no case for the accused appellant No.1. There is no reason for this Court to disbelieve dying declaration made by deceased Hiriben against the accused appellant No.1 who was none else but her own real brother. Evidence of other prosecution witnesses also corroborates the version of the deceased made in her DD.

Medical evidence also corroborates the version of the deceased made in DD. When on careful examination the trial Court came to the conclusion that the prosecution has proved its case against the appellant accused No.1 and accordingly he was convicted for the offence under Section 304 Part-I, then this Court would not interfere with such order of conviction and sentence. Hence, appeal of the appellant No.1 has to be dismissed.

Regarding accused - appellant No.2, learned Counsel Shri Vin vehemently submitted that though the deceased gave her name in her dying declaration, the same cannot be relied upon. The role attributed to the appellant - accused No.2 was that only she caught hold of the deceased at the time of incident. Having close look at the dying declaration made by the deceased and the other evidence led by the prosecution witness, it is doubtful that the accused - appellant No.2 was involved in the matter. When there is a reasonable doubt in the mind of the court, then the benefit must go to the accused. This was not even objected to by the learned APP Mr. Mankad, appearing for the respondent State.

In view of the above discussion, this appeal of the appellant - accused No.2 Manjuben, wife of Chandu Popat is required to be allowed and it is allowed. the judgement and order of conviction and sentence passed by the trial Court convicting the appellant accused No.2 also for the offence under section 304 Part-I read with Sec. 114 IPC is hereby quashed and set aside. Accordingly, appeal qua appellant No.1 is dismissed, but the same is allowed qua appellant - accused No.2 Manjuben. Bail bond of the accused - appellant No.2 stands cancelled.

(B.J.Shethna, J.)

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